

## BEST AVAILABLE COPY

Docket No.: 50341-041

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I hereby declare that:

My residence, post office and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter claimed and for which a patent is sought on the invention entitled **CONTROL OF FLOWERING**, the specification of which

☐ is attached hereto.

☒ was filed on June 4, 2001 as Application Serial No. 09/857,346 and was amended on (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is known to me to be material to patentability in accordance with Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

**Prior Foreign Applications(s):**

Number  
PP 7469

Country  
AUSTRALIA

Day/Month/Year filed  
Decmeber 3, 1998

Priority Claimed



I hereby claim the benefit under 35 USC §119(e) of any United States provisional application(s) listed below.

**Prior Provisional Application(s):**

Application Number  
60/116928

Filing Date  
January 22, 1999

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

**Prior U.S. Application(s):**

Serial No.

Filing Date

Status: Patented, Pending, Abandoned

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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I hereby appoint the following attorney(s) and/or agent(s): Stephen A. Becker, Reg. No. 26,527; John G. Bisbikis, Reg. No. 37,095; Christopher D. Bright, Reg. No. 46,578; Daniel Bucca, Reg. No. 42,368; Kenneth L. Cage, Reg. No. 26,151; Jennifer Chen, Reg. No. 42,404; Bernard P. Codd, Reg. No. 46,429; Lawrence T. Cullen, Reg. No. 44,489; Paul Devinsky, Reg. No. 28,553; Margaret M. Duncan, Reg. No. 30,879; Shamita De. Etienne-Cummings, Reg. No. 46,072; Ramyar M. Farid, Reg. No. 46,692; Brian E. Ferguson, Reg. No. 36,801; Michael E. Fogarty, Reg. No. 36,139; John R. Fuisz, Reg. No. 37,327; Willem F. Gadiano, Reg. No. 37,136; Keith E. George, Reg. No. 34,111; Mathew V. Grumbling, Reg. No. 44,427; John A. Hankins, Reg. No. 32,029; Joseph Hyosuk Kim, Reg. No. 41,425; Eric J. Kraus, Reg. No. 36,190; Catherine Krupka, Reg. No. 46,227; Jack Q. Lever, Reg. No. 28,149; Raphael V. Lupo, Reg. No. 28,363; Burman Y. Mathis III, Reg. No. 44,907; Michael A. Messina, Reg. No. 33,424; Dawn L. Palmer, Reg. No. 41,238; Joseph H. Paquin, Jr., Reg. No. 31,647; Scott D. Paul, Reg. No. 42,984; William D. Pegg, Reg. No. 42,988; Robert L. Price, Reg. No. 22,685; Gene Z. Robinson, Reg. No. 33,351; Joy Ann G. Serauskas, Reg. No. 27,952; Daniel H. Sherr, Reg. No. 46,425; David A. Spenard, Reg. No. 37,449; Arthur J. Steiner, Reg. No. 26,106; David L. Stewart, Reg. No. 37,578; Wesley Strickland, Reg. No. 44,363; Michael D. Switzer, Reg. No. 39,552; Daniel S. Trainor, Reg. No. 43,959; Cameron K. Weiffenbach, Reg. No. 44,488; Aaron Weisstuch, Reg. No. 41,557; Edward J. Wise, Reg. No. 34,523; Jeffrey A. Woller, Reg. No. 48,041; Alexander V. Yampolsky, Reg. No. 36,324; and Robert W. Zelnick, Reg. No. 36,976 all of

McDERMOTT, WILL & EMERY  
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Washington, DC 20005-3096

Direct Telephone Calls to: Telephone 202-756-8000

with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and all future correspondence should be addressed to them.

Full name of sole or first inventor: Joanne Elizabeth BURN

Inventor's signature:

Date:

Residence: WATSON, AUSTRALIAN CAPITAL TERRITORY, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 84 A' BECKETT STREET, WATSON, AUSTRALIAN  
CAPITAL TERRITORY 2602 AUSTRALIA

Full name of second inventor: William James PEACOCK

Inventor's signature:

Date:

Residence: DEAKIN, AUSTRALIAN CAPITAL TERRITORY, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 16 BRASSEY STREET, DEAKIN, AUSTRALIAN CAPITAL  
TERRITORY 2600 AUSTRALIA

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Full name of third inventor: Elizabeth Salisbury DENNIS

Inventor's signature:

Date:

Residence: DEAKIN, AUSTRALIAN CAPITAL TERRITORY

Citizenship: AUSTRALIA

Post Office Address: 100 HOPETOUN CIRCUIT, DEAKIN, AUSTRALIAN  
CAPITAL TERRITORY 2600 AUSTRALIA

Full name of fourth inventor: Candice Claire SHELDON

Inventor's signature:

Date:

Residence: SUTTON, NEW SOUTH WALES, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 1 QUARTZ STREET, SUTTON, NEW SOUTH WALES 2620  
AUSTRALIA

Full name of fifth inventor: Pascual PEREZ

Inventor's signature:

Date: 21<sup>st</sup> August 2002

Residence: AUBIERE, FRANCE

Citizenship: FRENCH

Post Office Address: C/ LABORATOIRE DE BIOLOGIE CELLULAIRE ET  
MOLECULAIRE, CAMPUS UNIVERSITAIRE DES CEZEAUX, 24 AVENUE DE  
LANDAIS, F-63107 AUBIERE, FRANCE

Full name of sixth inventor: Christopher Andrew HELLIWELL

Inventor's signature:

Date:

Residence: KALEEN, AUSTRALIAN CAPITAL TERRITORY

Citizenship: GREAT BRITIAN

Post Office Address: 25A BINGHAM CIRCUIT, KALEEN, AUSTRALIAN  
CAPITAL TERRITORY 2617 AUSTRALIA

Full name of seventh inventor: Dean Thomas ROUSE

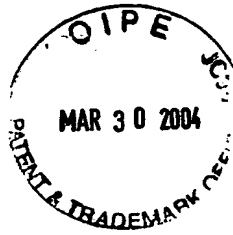
Inventor's signature:

Date:

Residence: MACGREGOR, AUSTRALIAN CAPITAL TERRITORY, AUSTRALIA

Citizenship: AUSTRALIA

Post Office Address: 131 OSBURN DRIVE, MACGREGOR, AUSTRALIAN  
CAPITAL TERRITORY 2615 AUSTRALIA



Docket No.: 50341-041

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	Customer Number: 20277
Joanne Elizabeth BURN, et al.	:	Confirmation Number: Unknown
Serial No. 09/857,346	:	Group Art Unit: not yet assigned
Filed: June 04, 2001	:	Examiner: not yet assigned
For: CONTROL OF FLOWERING	:	

**DECLARATION UNDER 37 C.F.R. § 1.132**

Mail Stop Unknown  
Commissioner for Patents  
BOX PCT – Examiners Bryan Tung and George M. Dombroske-PCT LEGAL OFFICE  
Alexandria, VA 22313-1450

Sir:

I, Judith Toffenetti, do hereby declare and say as follows:

1. I am the Judith Toffenetti listed as an attorney of record in this patent application

Serial No.09/857,346;

2. That the inventors of the invention claimed in this patent application are Joanne Elizabeth Burn, William James Peacock, Elizabeth Salisbury Dennis, Candice Claire Sheldon, Pascual Perez, Christopher Andrew Helliwell and Dean Thomas Rouse;

3. That on July 22, 2002 (within the period for response requiring a petition and fee for a two month extension of time) our office received *via* facsimile a declaration in two parts of six of the seven named inventors: a first declaration executed by Joanne Elizabeth Burn, William James Peacock, Elizabeth Salisbury Dennis, Candice Claire Sheldon and Christopher Andrew Helliwell; and a photocopy of the first executed declaration that was executed by Dean Thomas Rouse. A copy of the dated facsimile is enclosed herewith.

4. The declaration was not filed with the U.S.P.T.O. at that time because I still had not obtained an executed declaration from Pascual Perez.

5. On August 21, 2002, our office received by facsimile the declaration and power of attorney signed by Pascual Perez. The Perez declaration and accompanying letter from Pascual Perez were delivered to the Intellectual Property Paralegal Coordinator, Lorna Mullenax, and matched with the application file, which was in my office. A copy of the date stamped facsimile showing receipt of the Perez declaration at McDermott, Will & Emery on August 21, 2002 is enclosed.

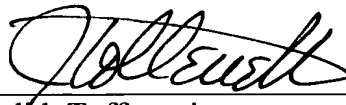
6. On August 21, 2002 I reviewed the three part declaration, and sequence list that had been prepared in response to the Notice of Missing Parts and sent an e-mail to the client indicating that I had received Pascual Perez's declaration. A redacted copy of my docket record for August 21, 2002, recording these events is enclosed. I sent the file to our paralegal staff for preparation of a Response to Notice of Missing Parts, and copying of accompanying documents, in preparation for filing with the U.S.P.T.O. the following day (August 22, 2002).

6. On August 22, 2002, I reviewed and signed the Response to Notice of Missing Parts, which included the declaration in three parts (including the Perez declaration), a response to Missing Requirements Notice, a Second Substitute Sequence Listing and Preliminary Amendment, a Supplemental Information Disclosure Statement, an assignment, a petition for a three month extension of time and a post card listing the documents being filed.

7. The complete Response to Notice of Missing Parts (including all accompanying documents) was copied, the various documents were clipped together and delivered to a courier for filing with the U.S.P.T.O. A copy of each of the documents filed with the U.S.P.T.O. was placed in the working application file. A date stamped post card accompanying the response and

documents filed with the U.S.P.T.O. evidences that the response and the above-discussed documents were filed with the U.S.P.T.O. on August 22, 2002.

Further, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Judith Toffenetti  
Reg. No. 39,048

Date: Mar 30, 2004



Docket No.: 50341-041

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	Customer Number: 20277
Joanne Elizabeth BURN, et al.	:	Confirmation Number: Unknown
Serial No. 09/857,346	:	Group Art Unit: not yet assigned
Filed: June 04, 2001	:	Examiner: not yet assigned
For: CONTROL OF FLOWERING	:	

**DECLARATION UNDER 37 C.F.R. § 1.132**

Mail Stop Unknown  
Commissioner for Patents  
BOX PCT – Examiners Bryan Tung and George M. Dombroske-PCT LEGAL OFFICE  
Alexandria, VA 22313-1450

Sir:

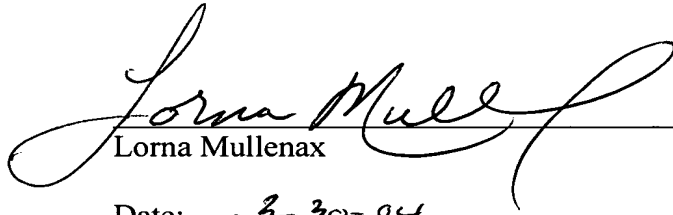
I, Lorna Mullenax, do hereby declare and say as follows:

1. I am the Intellectual Property Paralegal Coordinator at McDermott, Will & Emery.
2. On August 21, 2002 I received from our docketing staff a facsimile from Pascual Perez which included an executed declaration (the “Perez declaration”). The Perez declaration was matched with the patent application file, which was in Judith Toffenetti’s office (attorney of record).
3. On August 22, 2004, a Response to Notice of Missing Parts was prepared by the paralegal staff, reviewed and signed by Judith Toffenetti, the various documents were clipped together, and given to a courier for delivery to and filing with the U.S.P.T.O. The Response to Notice of Missing Parts included a declaration in three parts (including an executed declaration by Pascual Perez), a response to Missing Requirements Notice, a Second Substitute Sequence Listing and Preliminary Amendment, a Supplemental Information Disclosure Statement, an

assignment, a Petition for a three month extension of time and a post card listing the documents being filed.

7. As is the custom in our office, a copy of each of these documents was made prior to filing and placed in the application file. A date stamped post card accompanying the response and documents evidences that the response and the above-discussed documents were filed with the U.S.P.T.O. on August 22, 2004.

Further, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
Lorna Mullenax  
Date: 3-30-04



Docket No.: 50341-041



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	:	Customer Number: 20277
Joanne Elizabeth BURN, et al.	:	Confirmation Number: Unknown
Serial No.: 09/857,346	:	Group Art Unit: not yet assigned
Filed: June 04, 2001	:	Examiner: not yet assigned
For: CONTROL OF FLOWERING	:	

**DECLARATION UNDER 37 C.F.R. 132**

Mail Stop Unknown  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Katherine Bell, do hereby declare and say as follows:

(1) I am the Intellectual Property Coordinator at McDermott, Will & Emery and have more than 30 years experience in the Patent field.

(2) The U.S. Patent Office Decision of September 2, 2003 in response to the "Response to Notification of Defective Response" filed on March 6, 2003 was received and matched with the file on September 8, 2003. The Decision and file were forwarded to my desk for docketing and review. The Decision indicated that the International application was filed on December 2, 1999; on June 4, 2001 the basic national fee was filed; on March 22, 2002 a Notification of Missing Requirements was mailed; on August 22, 2002 Applicants filed a Declaration of the inventors and on February 11, 2003 a Notification of Defective Response was mailed indicating

the fifth inventor had not executed the Declaration. The Response to Notification of Defective Response that Applicants filed on March 6, 2003 indicated that three Declarations containing all the inventors signatures were filed on August 22, 2002 in Response to Notification of Missing Requirements.

(3) A review of the three part file indicated the contents as follows:

(a) All correspondence from the client and Counsel are kept on the left hand-side in date order, with the most recent correspondence on top;

(b) All Patent Office Communications and Responses are kept in the middle section of the file in date order, with the most recent communication/response on top; and

(c) Any Drawings are kept on the right-hand side of the file.

(4) In preparing the Request for Reconsideration filed on October 1, 2003, I noted the file contained the following:

(a) A Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DOEO/US) was mailed March 22, 2002 indicating that the Oath or declaration of the inventors was missing in compliance with 37 CFR 1.497(a) and (b) and a substitute computer readable form of the sequence listing, together with a computer readable form and amendment to the specification were also due . A due date of two months; i.e. May 22, 2002 was set with the indication that extensions were available.

(b) A letter of April 22, 2002 sent to the client reporting the Notification of Missing Requirements and enclosing a Declaration and Assignment documents for execution by the inventors.

(c) E-mail correspondence indicating there was a problem with obtaining Mr. Perez's signature from the client;

(d) E-mail correspondence between Counsel and client regarding extending the Response deadline;

(e) A letter of July 22, 2002 from the client forwarding the Combined Declaration of Inventors Burn; Peacock; Dennis; Sheldon and Helliwell; and a second Combined Declaration of Inventor Rouse, containing photocopy signatures of the previous five Inventors.

(f) A letter of August 13, 2002 to the client indicating that we had not filed the Declaration of Inventors Burn; Peacock; Dennis; Sheldon and Helliwell and the Declaration of Inventor Rouse as yet and that the non-extendable deadline was August 22, 2002.

(g) A letter of August 21, 2002 from Mr. Pascual Perez forwarding his Declaration and Power of Attorney received by Facsimile with a notation that the original was being forwarded by DHL.

(h) A Response to Notification of Missing Requirements containing Declaration and Power of Attorney (which is in compliance with 37 CFR 1.63); Second Substitute Sequence Listing and Preliminary Amendment; Information Disclosure Statement; Assignment; Petition for Three Month Extension of Time were filed on August 22, 2002. The file copy of this Response had attached in the following order copies of a Combined Declaration signed by Inventors Burn, Peacock, Dennis, Sheldon and Helliwell; a Combined Declaration signed by Burn, Peacock, Dennis, Sheldon, Helliwell and Rouse; a Declaration and Power of Attorney signed by Pascual Perez; Substitute Sequence Listing in paper form; a Response to Notification of Missing Requirements Under 35 USC 371, Second Substitute Sequence Listing and Preliminary Amendment; Petition for Extension of Time; Supplemental Information Disclosure Statement.

(5) After review of the Patent Office Decision of September 2, 2003 and the file, I then prepared the Request for Reconsideration attaching copies of the stamped date receipt card of August 22, 2002; Response to Notification of Missing Requirements; Declaration and Power of Attorney of Pascual Perez; Combined Declaration of Inventors Burn, Peacock, Dennis, Sheldon and Helliwell; Combined Declaration of Inventor Rouse. The Request for Reconsideration was filed on October 1, 2003.

(6) It was apparent from my review that we had waited to file the Response to Notification of Missing Requirements until we had received all the Inventors' signatures; that our file contained in order the papers that were submitted with the Response and copies of all three Declarations were secured in the file.

Further, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Katherine M. Bell

Date: March 30, 2004

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(202) 756-8000  
Facsimile: (202) 756-8087  
Date: March 30, 2004